



PATENT
Serial No. 09/940,805
Docket No. 58880/278

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: H. Wurster et al.
Application No.: 09/940,805
Title: Integrated Decorator Coupler and Food Decorating Assembly
Filing Date: August 29, 2001
Art Unit: 1761
Examiner: S. Weinstein

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APPEAL BRIEF UNDER 37 C.F.R. 41.37

SIR:

This brief is in furtherance of the Notice of Appeal filed on September 26, 2006.
The Office is authorized to charge Kenyon & Kenyon's Deposit Account No. 11-0600 for the appeal brief fee and for any other fee that may be required for consideration of this paper.



I. REAL PARTY IN INTEREST

Rich Products Corporation ("Rich Products") is a real party in interest for issues related to this appeal by virtue of the assignment recorded on August 29, 2001 at reel number 012136; frame number 0312 from the inventors to Rich Products.

II. RELATED APPEALS AND INTERFERENCES

There are no other appeals, interferences, or judicial proceedings known to Appellants, Appellants' legal representative, or assignee which may be related to, directly affect, or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 1-12 and 14-20 are pending in the present application and stand rejected. Claim 13 was cancelled by the Amendment of April 25, 2006.

IV. STATUS OF AMENDMENTS

No amendments to the claims were made after the Final Office Action of July 26, 2006.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The claimed subject matter is directed to a dual-functioning, integrated coupler that has a decorative opening designed to extrude filling in a decorative shape and that is attachable to a decorative tip for extruding filling in another decorative shape. (See page 2, line 31 to page 3, line 4 and Figure 2). Such an integrated coupler functions as both a decorative tip and as a coupler to which an additional decorative tip may be attached. As a result, the integrated coupler provides a user with a decorative tip for immediate use as well as the option to change the design of the extruded filling by attaching a second decorative tip.

Specifically, independent claim 1 recites an integrated decorative coupler for insertion into a bag fabricated to hold filling. (See page 4, lines 3-4 and Figure 3). The integrated coupler comprises a hollow shaft having a non-decorative opening for

receiving filling and a decorative tip extending from and integral with the hollow shaft. (See page 4, lines 3-6 and Figure 1). The decorative tip has a non-circular decorative opening designed to extrude filling in a first non-cylindrical decorative shape. (See page 4, line 7 and Figure 1). The integrated coupler further includes means provided on the exterior of the shaft to engage a second decorative tip for extruding filling in a second decorative shape. (See page 4, lines 22-23 and Figure 2, reference character 15).

Independent claim 5 recites a food decorating assembly comprising a flexible bag having an upper aperture and a lower aperture. The upper aperture is sized to receive filling and the lower aperture is sized to attach to a coupler. (See page 5, lines 12-16 and Figure 4). The food decorating assembly further comprises an integrated decorator coupler comprising a hollow shaft having a non-decorative opening for receiving filling and a decorative tip extending from and integral with the hollow shaft. The non-circular decorative opening is designed to extrude filling in a first non-cylindrical shape. The integrated decorator coupler is positioned in the bag with the decorative tip protruding through the lower aperture of the bag. The integrated decorator coupler further includes means provided on the exterior of the shaft to engage a second decorative tip for extruding filling in a second decorative shape. (See page 4, lines 22-23 and Figure 2, reference character 15). The assembly optionally includes a retainer nut devised to secure the second decorative tip to the integrated decorator coupler. (See page 4, lines 27-28 and Figure 4, reference character 30).

Independent claim 11 recites a method of decorating food comprising providing filling in a flexible bag. The bag has an upper aperture sized to receive filling and a lower aperture sized to dispense filling. The bag has an integrated decorator coupler protruding through the lower aperture. The integrated decorator coupler comprises a hollow shaft and a decorative tip defining a non-circular decorative opening extending from and integral with the hollow shaft. The non-circular decorative opening is designed to extrude filling in a first non-cylindrical decorative shape. The integrated decorator coupler includes means provided on an exterior of the shaft to engage a second decorative tip for extruding filling in a second decorative shape. (See page 4, lines 22-23 and Figure 2, reference character 15). The method further includes providing pressure on the bag to

push filling through the non-circular decorative opening onto the food. (See page 7, lines 20-22).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

In the Final Office Action of July 26, 2006, the Examiner rejected claims 1-12, and 14-20 as being allegedly rendered obvious by U.S. Patent No. 6,153,238 to Shannon (“Shannon”) in view of GB 2,237,224 to Craig; U.S. Patent No. 3,191,809 to Schultz; U.S. Patent No. 2,103,111 to Ekdahl; U.S. Patent No. 2,968,262 to Lacey; U.S. Patent No. 2,945,458 to Setecka; U.S. Patent No. 560,719 to Hueg and further in view of EP Patent No. 757006 to Ooms; FR Patent No. 598,674 to Berrod; U.S. Patent No. 3,847,523 to Parrish; U.S. Patent No. 2,320,496 to Wechsler; U.S. Patent No. 4,844,917 to DeLorimere; U.S. Patent No. 2,419,654 to Moore; U.S. Patent 6,179,165 to Knight; and U.S. Patent Publication 2003/0205584 to Niggemyer.

VII. ARGUMENT

Rejection of Claims 1-12 and 14-20 Under §103(a)

The Final Office Action of July 26, 2006 states that “it would have been obvious to provide a non-circular decorative tip with means to accept and secure other decorative tips to provide the user with greater choice of designs” or “it would have been obvious to modify the circular outlet coupler, which already has a means to accept and secure decorative tips, by providing a non-circular outlet.” (Office Action dated July 26, 2006, p. 2).

Applicants submit that the Final Office Action fails to provide a reasonable basis that one of ordinary skill in the art would have had the requisite motivation to substitute the circular opening of Shannon’s coupler with a non-circular decorative opening. Not only is there a lack of motivation in the art, but the use of a non-circular decorative opening actually runs counter to the intended purpose of Shannon’s coupler. The courts have held that there is no motivation to modify a reference when the suggested combination of references would require “a change in the basic principle under which the [primary reference] construction was designed to operate.” (*In re Ratti*, 270 F. 2d 810, 813, 123 USPQ 349, 352 (CCPA 1959)).

Shannon's coupler, like all of the couplers in the other cited references, shows a large circular opening. (As used herein, a "large" circular opening means an opening on a coupler that is larger than the decorative opening of an attached tip). The primary purpose, if not the only purpose, of the opening of the couplers in the cited art is to allow filling (such as icing) to flow from a bag, through the opening and through an attached decorative tip with a minimum amount of effort by the user. To minimize the resistance to the flow of the filling through the device, the basic laws of fluid dynamics requires the opening of the coupler to be circular and requires the opening of the coupler to be the same size or larger than the decorative opening of the tip. (See Wurster Declaration, filed April 25, 2006, paragraph 4).

Accordingly, the couplers cited by the examiner always describe large circular openings. This indicates that the design of their couplers is dictated by the desired function of allowing filling to flow to a tip with a minimum amount of resistance. For example, referring to Exhibit A, the diameter D of the adapter 141 of Shannon shown in FIG. 5 is larger than the diameter d the decorative tip 40 shown in FIG. 4. (The designations "D" and "d" have been added by Applicants for identification purposes). Nothing in any of the cited references suggests any reason or desirability for a coupler to have a non-circular opening.

The use of a non-circular decorative opening as recited in claim 1, for example, necessarily increases the amount of resistance of the opening, thereby running counter to the intended purpose of the couplers of the prior art. Thus, there is motivation for one of ordinary skill in the art not to modify the circular openings of the prior art couplers to a non-circular decorative shape.

In addition, the Office Action identifies no motivation for one of skill in the art to take a first decorative tip, such as that shown in Figure 7 of Shannon, and modify it to allow it to accept a second decorative tip on top of the first decorative tip.

For at least these reasons, Appellants submit that claim 1-12 and 14-20 are not rendered obvious by Shannon in view of the other secondary and tertiary references.

Rejection of Claim 7 Under §103(a)

Claim 7 is not rendered obvious by any of the cited references for the reasons stated above. Claim 7 additionally recites a second decorative tip attachable to the integrated decorator coupler and the retaining nut. This additional limitation is not described by Shannon in combination with the other cited references.

Rejection of Claim 11 Under §103(a)

Claim 11 recites a method of decorating food comprising, *inter alia*, pushing filling through the non-circular opening of a coupler. This additional limitation is not described by Shannon in combination with the other references.

Rejection of Claim 12 Under §103(a)

Claim 12 is not rendered obvious by any of the cited references for the reasons stated above. Claim 12 additionally recites a second decorative tip attachable to the integrated decorator coupler and the retaining nut. This additional limitation is not described by Shannon in combination with the other references.

Rejection of Claim 16 Under §103(a)

Claim 16 is not rendered obvious by any of the cited references for the reasons stated above. Claim 16 additionally recites a coupler having a decorative tip including dentate protrusions. This additional limitation is not described by Shannon in combination with the other references.

Rejection of Claim 17 Under §103(a)

Claim 17 is not rendered obvious by any of the cited references for the reasons stated above. Claim 17 additionally recites a coupler having a decorative tip including dentate protrusions. This additional limitation is not described by Shannon in combination with the other references.

APPENDICES

VIII. CLAIMS APPENDIX

The claims in their current form are presented below:

1. An integrated decorator coupler for insertion into a bag fabricated to hold filling, comprising:
 - a hollow shaft having a non-decorative opening for receiving filling; and
 - a decorative tip extending from and integral with the hollow shaft, wherein the decorative tip has a non-circular decorative opening designed to extrude filling in a first non-cylindrical decorative shape; and
 - means provided on an exterior of the shaft to engage a second decorative tip for extruding filling in a second decorative shape.
2. The integrated decorator coupler of claim 1, wherein the means is screw threads to engage a retaining nut.
3. The integrated decorator coupler of claim 1, wherein the integrated decorator coupler tapers downwardly from the non-decorative opening to the non-circular decorative opening.
4. The integrated decorator coupler of claim 1, wherein the integrated decorator coupler has a shoulder to securely seat the integrated decorator coupler in the bag.
5. A food decorating assembly comprising:
 - a flexible bag having an upper aperture and a lower aperture, the upper aperture sized to receive filling and the lower aperture sized to attach to a coupler;
 - an integrated decorator coupler comprising a hollow shaft having a non-decorative opening for receiving filling and a decorative tip extending from and integral with the hollow shaft, wherein the non-circular decorative opening is designed to extrude filling in a first non-cylindrical decorative shape, the integrated decorator coupler

positioned in the bag with the decorative tip protruding through the lower aperture of the bag;

means provided on an exterior of the shaft to engage a second decorative tip for extruding filling a second decorative shape; and optionally

a retainer nut devised to secure the second decorative tip to the integrated decorator coupler.

6. The food decorating assembly of claim 5, wherein the integrated decorator coupler has an externally threaded portion capable of engaging with the retaining nut.

7. The food decorating assembly of claim 5, further comprising the second decorative tip attachable to the integrated decorator coupler and the retaining nut.

8. The food decorating assembly of claim 5, wherein the bag comprises plastic or fabric.

9. The food decorating assembly of claim 5, wherein the flexible bag is preassembled with an integrated decorator coupler seated at the lower aperture.

10. The food decorating assembly of claim 5, wherein the flexible bag is pre-filled with filling.

11. A method of decorating food comprising:

providing filling in a flexible bag, the bag having an upper aperture sized to receive filling and a lower aperture sized to dispense filling, the bag having an integrated decorator coupler protruding through the lower aperture, the integrated decorator coupler comprising a hollow shaft and a decorative tip defining a non-circular decorative opening extending from and integral with the hollow shaft, the non-circular decorative opening designed to extrude filling in a first non-cylindrical decorative shape, wherein the integrated decorator coupler includes means provided on an exterior of the shaft to engage a second decorative tip for extruding filling a second decorative shape; and

providing pressure on the bag to push filling through the non-circular decorative opening and onto the food.

12. The method of claim 11, further comprising attaching a second decorator tip to the integrated decorator coupler, the second decorative tip shaped to extrude filling in a decorative shape different from that made by the integrated decorator coupler.

13. (Canceled)

14. The method of claim 12, wherein a retaining nut secures the second decorator tip to the integrated decorator coupler.

15. The food decorating assembly of claim 5, further comprising the retaining nut.

16. The integrated decorator coupler of claim 1, wherein the decorative tip includes dentate protrusions defining the non-circular decorative opening.

17. The integrated decorator coupler of claim 5, wherein the decorative tip includes dentate protrusions defining the non-circular decorative opening.

18. The method of claim 11, wherein the decorative tip includes dentate protrusions defining the non-circular decorative opening.

19. The integrated decorator coupler of claim 16, wherein the non-circular opening is star-shaped.

20. The integrated decorator coupler of claim 17, wherein the non-circular opening is star-shaped.

IX. EVIDENCE APPENDIX

No evidence is being submitted with this Appeal Brief.

X. RELATED PROCEEDINGS APPENDIX

Per section (II), there are no other appeals, interferences, or judicial proceedings known to Appellants, appellant's legal representative, or assignee which may be related to, directly affect, or be directly affected by or have a bearing on the Board's decision in the pending appeal.


XI. CONCLUSION

Appellants respectfully request that the Board of Patent Appeals and Interferences reverse the Examiner's decision rejecting claims 1-12 and 14-20 and direct the Examiner to pass the case to issue.

Respectfully submitted,

KENYON & KENYON LLP

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